

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3415 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KALAVAD AGRICULTURE PRODUCE MARKET COMMITTEE

Versus

STATE OF GUJARAT

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Appearance:

M/S THAKKAR ASSOC. for Petitioners

Govt.Pleader for Respondent No. 1, 2

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 06/05/98

ORAL JUDGEMENT

Rule. In the facts and circumstances of the case this petition is taken up final hearing today.

1. This petition under Article 226 of the Constitution challenges the order dated 17-4-1998 passed by the Director of Agriculture, Marketing and Rural Finance (hereinafter referred to as "the Director" )

postponing the elections to the Agricultural Produce Market Committees of Kalavad (District Jamnagar) and the apprehended action of appointment of administrator under the Gujarat Agricultural Produce Market Committees Act, 1963 (hereinafter referred to as "the Act" ).

2. The facts leading to the present petition are as under:

3. This petition is filed by the Agricultural produce Market Committee (hereinafter referred to as the APMC), Kalavad, through its Chairman as petitioner no.1 and two of its members. It is averred that the said APMC is duly constituted under Sections 10 and 11 of the Act and since the term of the said APMC is four years from the date of its first general meeting, the term of the APMC is upto 10-5-1998. The Director was required to hold the elections and complete the election process before 10-5-1998. Accordingly the Director had issued election programme on 4-3-1998 and substantial part of the election process was over and voters lists were prepared. Only the stages of filing of nomination forms, actual polling and counting of votes are required to be completed. However, in the meanwhile, by his impugned order dated 17-4-1998 ( Annexure F) the Director cancelled the election of APMC, Kalavad on the ground of scarcity of water in the taluka. The said notification dated 17-4-1998 is issued under rule 10(2) of the Agricultural Produce Market Committees Rules 1965 (hereinafter referred to as "the Rules" ).

4. The aforesaid impugned order is challenged on various grounds such as the election process having already commenced, could not have been stalled by the Director; secondly the impugned order is passed on the basis of the political pressure exerted by the opponents of the present members of the Market Committee. It is further submitted that even if the election could not have been held for whatever reason, it was incumbent upon respondent no.1 under Section 11(4)(aa) of the Act to extend the term of the outgoing market committee till the newly elected committee assumed its office and that in the facts of the case it is not permissible for the respondents to appoint an administrator in exercise of powers under Section 11(5) of the Act. It is apprehended that on political consideration, the Government would appoint an administrator. The petitioners have, therefore, approached this Court for a writ of mandamus to quash and set aside the impugned order dated 17-4-1998 passed by the Director cancelling the election programme of the APMC, Kalavad and directing the respondents to

hold election of the Market Committee as per the election programme declared earlier and also for a writ of mandamus to direct the the State Government to extend the term of the present market committee upto the date on which the newly elected committee holds its first meeting and assumes the office. A writ is also sought to restrain the State Government from appointing an administrator.

5. At the hearing of the petition learned Counsel for the petitioners have raised the following contentions:

(1). Once the election process had started it was not open to the Director to cancel or postpone the election programme and in any view of the matter there were no justifiable grounds for cancelling the election.

(2). Even if the election could be postponed and were required to be postponed, the State Government was bound to extend the term of the outgoing APMC under the provisions of Section 11(4) (aa) of the Act and the State Government cannot appoint an administrator under Section 11(5)(a)(i) of the Act as the appointment of an administrator would be contrary to the democratic principles. Strong reliance is placed on the decision of this Court in the case of Abdulgani Abdulbhai Kureshi & Anr. Vs. State of Gujarat & anr. 1992(1) GLR 503

6. On the other hand Mr.S.N.Shelat, learned Addl.Advocate General and Mr.P.G.Desai, learned Government Pleader have made the following submissions:

(1). The power to postpone the election already fixed under rule 10(2) of the Rules, is already upheld by this Court in 1990(2) GLH 194. In view of the peculiar facts applicable to the three APMCs in question, the Director was justified in postponing the elections.

(2). It is in the discretion of the Government to decide whether to extend the term of the outgoing APMC or to appoint an administrator and the members of the outgoing APMC have no right to continue in office beyond the stipulated period of four years. Reliance is placed on the decision of a Division Bench of this Court in Special Civil Application No. 8204 of 1990 and on the decision of the learned single Judge of

this Court in the case of Moti Panchi Nagar Panchayat Vs. State of Gujarat and Ors, 1995(1) GLR 176.

7. Having heard the learned Counsel for the parties, this Court is of the view that there is no substance in the first contention urged on behalf of the petitioners that respondent no.2 did not have the power to postpone the elections. As already held by this Court in the case of Ashoksinh Gopalsinh Jadeja & anr. Vs. D.H.Brahmbhatt & anr. 1990(2) GLH 194, as per Section 21 of the Bombay General Clauses Act, 1905, Competent Authority can issue notification and/or order to add, amend, vary or rescind the same. These expressions are wide enough to include issuance of notification for postponing the election. Hence it has to be held that the Director had power to postpone the elections which had already commenced as per the programme earlier fixed under the provisions of Rule 10(2).

8. As far as the justification for postponing the election is concerned, as per the settled legal position, this Court while exercising the power of judicial review would not sit in appeal over the decision of the authority and the permissible grounds of interference with such administrative decisions are very limited. In the facts and circumstances of the case, therefore, it cannot be said that postponing of elections to the aforesaid APMCs was illegal. However, the major controversy had centred around the question whether the Government was bound to extend the term of the outgoing APMC till the first meeting of the new APMC was held as contended by the petitioner or whether the Government has untrammelled power to appoint an administrator as soon as the four year term of the elected APMC is over.

9. The second ground urged on behalf of the petitioner and the submissions thereto made on behalf of the respondents are already elaborately considered by this Court in the judgment dated April 30, 1998 in Special Civil Application No.9301 of 1997 and cognate petitions. This Court has held that in case the elections to an APMC cannot be held before expiry of its normal four year term, the Government is first required to consider the question whether extension should be granted to the Committee under Section 11(4)(aa) of the Act in light of the principles discussed in the said judgment and that if the Government comes to the conclusion that extension should not be granted, then only the Government should resort to the second alternative of appointing an administrator under Section

11(5) of the Act.

10. In the present petition, there is no pleading on behalf of the State Government or any material produced on the record to show whether the Government has considered the question of granting extension to the outgoing APMC beyond 10-5-1998 when the elections are postponed. Ordinarily, this Court would have directed the Government to consider whether the extension should be granted to the outgoing APMC under Section 11(4)(aa) of the Act or whether administrator should be appointed under Section 11(5) of the Act. The Court, however, does not propose to issue any such direction firstly in view of the fact that on behalf of the respondents it has been stated that the Director has agreed to issue notification for holding elections to APMC in the near future and secondly, the learned Counsel for the petitioners has also rightly placed reliance on the order dated 12-3-1998 of this Court in Special Civil Application No. 8943 of 1997, wherein accepting the contention of Mr. Yatin Oza appearing for APMC, Dahod, this Court had directed the respondents to issue election notification by 15-5-1998 and then to complete the entire election process by 31-7-1998 and the ad interim relief granted earlier during pendency of that petition i.e. ad interim injunction against appointment of administrator was ordered to continue till the elections are held and the newly elected committee takes over, unless in the meantime, any action is required to be taken by the Government under the provisions of the Act on account of default or misconduct committed by the APMC. There is no reason why the same directions should not be issued in the present petition.

11. It is accordingly directed that the respondents shall issue election notifications for APMC, Kalavad latest by 31-5-1998 and thereafter complete the entire election process as per the provisions of the Act and Rules by 31-7-1998.

12. Notification dated 17-4-1998 at Annexure F postponing further election programme of APMC, Kalavad, is quashed and set aside and it is directed that the respondents shall commence the election process from the stage where it had stopped pursuant to the impugned notification dated 17-4-1998 issued by the Director. It is further directed no administrator shall be appointed till the elections are held and the newly elected committee takes over, unless in the meantime, any action is required to be taken by the Government under the provisions of the Act on account of any default or

misconduct committed or abuse of its power by the APMC.

13. The petition is accordingly allowed and Rule is made absolute to the aforesaid extent with no order as to costs. Writ to be sent down to the Director of Agricultural Marketing and Rural Finance forthwith.